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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

In the Matter of the Application of Ohio )	
Edison Company, The Cleveland Electric )	
Illuminating Company, and The Toledo )	Case No. 07-551-EL-AIR
Edison Company for Authority to Increase )	Case No. 07-552-EL-ATA
Rates for Distribution Service, Modify )	Case No. 07-553-EL-AAM
Certain Accounting Practices and for )	Case No. 07-554-EL-UNC
Tariff Approvals. )	

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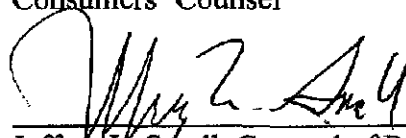
MOTION TO INTERVENE  
AND  
MEMORANDUM IN RESPONSE TO WAIVER REQUESTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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Pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned proceedings. The reasons for granting the OCC's motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On May 8, 2007, the Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE," collectively with OE and CEI, "FirstEnergy" or the "Company") opened the above-captioned proceedings and, among other matters, moved to establish test period dates and sought waivers from certain standard filing requirements ("Motion"). The results from these dockets could adversely affect FirstEnergy's 1.9 million residential customers who pay for distribution service. The Commission should grant OCC's Motion to Intervene so that OCC can fully participate in these proceedings and protect the interests of residential customers.

**II. MEMORANDUM IN SUPPORT OF INTERVENTION**

Pursuant to R.C. Chapter 4911, OCC moves to intervene in the above-captioned dockets under its legislative authority to represent the interests of the 1.9 million residential distribution customers of FirstEnergy. The interests of residential electric customers in Ohio are "adversely affected" by these cases, thus satisfying the intervention

standard in R.C. 4903.221. The OCC also meets the Commission's required showing for a party that has a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2), and should therefore be permitted to intervene in this case.

R.C. 4903.221(B) requires the PUCO to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and,
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

The nature and extent of OCC's interest lies in the rates paid by residential customers for distribution, in the terms for obtaining that service, and in the service quality provided by FirstEnergy that are likely to be important topics in the above-captioned cases. The OCC's interest has been shown by its participation in every major case that involved distribution ratemaking for the FirstEnergy companies for the last thirty years, including the rate cases during the 1990s that are mentioned in the Company's Motion.<sup>1</sup>

The OCC is concerned regarding the first distribution rate case for FirstEnergy since the 1990s and the first since electric restructuring legislation was enacted in 1999. The OCC notes that the electric restructuring legislation that was enacted in 1999 retained traditional ratemaking requirements for the electric distribution portion of utility functions. The OCC also seeks to verify that the Company's submissions in areas

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<sup>1</sup> Motion at 4.

affected by previous Commission orders -- e.g. customer line extensions -- comply with those orders and abide by the spirit of the Commission's instructions.<sup>2</sup> The OCC's position, therefore, directly relates to the merits of the case.

The OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the Commission's effective treatment of this unusual proceeding. The OCC will significantly contribute to the full development and equitable resolution of the issues herein, based on its expertise in regulatory and energy matters. The OCC has a demonstrated history of concern over FirstEnergy's distribution rates and service.

For the reasons expressed above regarding the criteria contained in R.C. 4903.221, the OCC also meets the similar criteria of Ohio Adm. Code 4901-1-11(B) which states that the Commission shall consider (1) the "nature and extent of the prospective intervenor's interest," (2) the "legal position advanced by the prospective intervenor and its probable relation to the merits of the case," (3) whether the intervention "will unduly prolong or delay the proceedings," and (4) whether "the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues," and (5) the "extent to which the person's interest is represented by existing parties."

In particular, the OCC brings its statewide, residential consumer perspective to this case that is different than and not represented by any other entity in Ohio. The OCC's interest in this case is consistent with its statutory role as the representative of residential consumers of public utility service.

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<sup>2</sup> See, e.g., *In re FirstEnergy Line Extensions*, Case No. 01-2708-EL-COI, et al., Order (November 7, 2002).

The OCC meets the criteria set forth in R.C. 4903.221, the Commission's rules, and Ohio Supreme Court precedent.<sup>3</sup> On behalf of FirstEnergy's 1.9 million residential distribution customers, the Commission should grant OCC's Motion to Intervene.

### **III. MEMORANDUM IN RESPONSE TO WAIVER REQUESTS**

The OCC does not necessarily oppose the waivers sought by FirstEnergy regarding the Commission's standard filing requirements. However, the manner in which the Company proposes to make information available to parties that would otherwise be contained in standard filings raises concerns.

#### **A. System Maps**

FirstEnergy states that it seeks "a waiver from the requirement that system maps must be filed with the rate case application" because "filing system maps unnecessarily creates a system security issue."<sup>4</sup> The waiver does not result from any of the general reasons stated by the Company for its waiver requests -- i.e., a relationship to generation, changes in Commission requirements, and the length of time since the last rate cases.<sup>5</sup> In fact, the lengthy time since the last rate cases is a factor that intensifies the OCC's interest in examining system maps regarding their changes since the 1990s.

The Company's proposal to "make maps available for review in FirstEnergy offices" is inadequate.<sup>6</sup> The OCC can envision its review of FirstEnergy's distribution system maps either by the OCC's in-house staff or by its consultant. The OCC would

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<sup>3</sup> See, e.g., *Ohio Consumers' Counsel v. Public Util. Comm.*, 111 Ohio St. 3d 384, 2006-Ohio-5853 at ¶¶18-23.

<sup>4</sup> Motion at 5.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

want such a review to be effective for the purpose of developing the OCC's case. A review that is limited to relatively short periods in offices located in Akron would not provide the OCC with an effective avenue for using the system maps. If the Commission grants the waiver sought by FirstEnergy regarding the filing of system maps, it should do so with the instruction that the Company is expected to enter into a reasonable arrangement with the OCC that will permit the OCC to obtain copies of the system maps for review and inspection in the OCC's offices as well as elsewhere by the OCC's consultant.

#### **B. Income Tax Returns**

FirstEnergy also states that it seeks "waivers . . . related to providing information regarding federal and state income tax returns" "[d]ue to confidentiality concerns."<sup>7</sup> Again, the waiver does not result from any of the general reasons stated by the Company for its waiver requests.<sup>8</sup> In their place, FirstEnergy cites unspecified "confidentiality concerns" and proposes to provide the information "for review at FirstEnergy offices if necessary."<sup>9</sup> The OCC expects that it will seek to examine tax returns. For the same reasons stated in the last section, the Commission should only grant the requested waiver if the PUCO instructs FirstEnergy to enter into a reasonable arrangement with the OCC that will permit the OCC to obtain copies of the tax returns for use at the OCC's offices as well as elsewhere by the OCC's consultant.

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<sup>7</sup> Id. at 7.

<sup>8</sup> Id. at 4.

<sup>9</sup> Id. at 7.

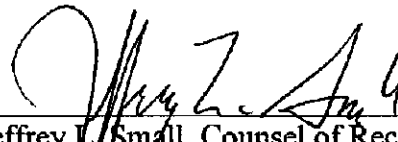
#### IV. CONCLUSION

The above captioned cases could impact residential customers, *inter alia*, through the rates paid for distribution service, the terms under which that service is provided, and the quality of that service. For the reasons stated above, the PUCO should grant OCC's Motion to Intervene on behalf of the 1.9 million residential distribution customers of FirstEnergy who have an interest in the outcome of these cases.

The Commission should proceed with caution regarding the Company's waiver requests related to system maps and income tax returns. The alternative offered by FirstEnergy as a substitute for filings -- limiting use of the information to inspection at FirstEnergy's offices -- is inadequate. As a condition for granting these waiver requests, the Commission should instruct FirstEnergy to enter into a reasonable protective agreement with the OCC that will permit the OCC to inspect the information outside the Company's offices.

Respectfully submitted,

Janine L. Migden-Ostrander  
Consumers' Counsel

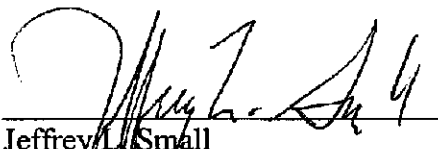


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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's *Motion to Intervene* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 22nd day of May 2007.

  
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